

Applicant : Beaurain et al.  
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Attorney's Docket No.: 21249-014US1 / LDR/10/US

### REMARKS

In an Office action dated October 15, 2008, the Examiner considered then-pending claims 21-64, following which claims 31, 32, 51, and 53 were objected to as being dependent upon a rejected base claim, but deemed allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The action was made final.

In a reply filed April 15, 2009,<sup>1</sup> amendments were presented to overcome the objections and present the allowable claims rewritten in independent form including all of the limitations of the base claim and any intervening claims. Other dependent claims were aligned with the allowable, rewritten, independent claims.

On May 1, 2009, Examiner Yang left a voicemail for the undersigned. In the voicemail, Examiner Yang stated that he was preparing to issue the case and wanted to handle some formalities over the phone. In reply, the undersigned left a voicemail for Examiner Yang on May 28, 2009.

Rather than handling the formalities by telephone, however, an advisory action was issued on June 3, 2009, refusing to enter the amendments. The basis for the refusal was stated to be that dependent claims 33-35, 50, 52, 72, and 73 raise the issue of new matter.

It is respectfully submitted that any formalities involved with the April 15, 2009, reply could and should have been resolved by telephone, or at least by a *Quale* action pursuant to MPEP § 706.07(f)III(L).<sup>2</sup> Nevertheless, to advance this case to issue without further expense and delay, a petition to revive this application is being filed as directed by Examiner Yang.

In connection with the accompanying petition to revive under 3 C.F.R. § 1.137(b), an amended reply to the Office action dated October 15, 2008, is submitted. The amended reply contains amendments under 37 C.F.R. § 1.116 that cancel all the rejected claims and/or

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<sup>1</sup> The April 15, 2009, reply was timely, being accompanied by a grantable petition for a three-month extension of time.

<sup>2</sup> "Formal matters which are identified for the first time after a reply is made to a final Office action and which require action by applicant to correct may be required in an Ex parte Quayle action if the application is otherwise in condition for allowance."

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otherwise prima facie place the application in condition for allowance. The amended reply cancels claims 33-35, 50, and 52 deemed by the advisory action to raise new matter issues, and does not include the claims numbered 72 and 73 in the April 15, 2009, reply similarly deemed objectionable. Thus, all bases for refusing entry of the amendments set forth in the advisory action have been mooted.

In addition to the amended reply in accordance with 37 C.F.R. § 1.116, the accompanying petition to revive under 3 C.F.R. § 1.137(b) further includes the petition fee required by 37 C.F.R. § 1.17(m) and the required statement that the entire delay in filing the amended reply from the due date for the reply until the filing of the petition was unintentional. No terminal disclaimer is required. The petition to revive therefore is grantable, to the extent it is deemed required.

For the foregoing reasons, it is respectfully requested that this application be revived (if necessary), that the amended reply accompanying the petition to revive be entered, and that claims 21, 25-30, 32, 36-45, 48, 49, 54, 55, and 65-73 be issued as soon as possible.

### ***Conclusion***

In view of the reasons given above, reconsideration of the pending application and the timely allowance of pending claims 21, 25-30, 32, 36-45, 48, 49, 54, 55, and 65-73 are respectfully requested.

It is believed that this paper addresses all of the rejected claims and other matters sufficiently to support the allowance of all of the pending claims. The June 3, 2009, advisory action contains a number of statements potentially reflecting characterizations of various claims and supporting descriptions, but regardless of whether any such statements are addressed in these remarks, the Principal (as defined in 37 C.F.R. § 1.32(a)(3)) declines to automatically subscribe to any statement or characterization in the advisory action. Accordingly, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reason for patentability of any or all pending claims (or other claims) that have not been expressed. Nothing in this paper should be construed as conceding any issue

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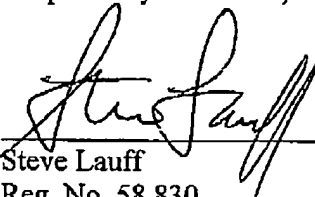
with regard to any claim except as specifically and expressly stated in this paper, and the amendment of any claim should not be construed as conceding the unpatentability of the claim prior to amendment except as specifically and expressly stated in this paper.

The Commissioner is hereby authorized by this written request to treat this or any concurrent or future reply that requires a petition for an extension of time under 37 C.F.R. § 1.136(a) for its timely submission as incorporating a petition for extension of time for the appropriate length of time. The Commissioner is further authorized to charge all required fees, including without limitation excess claim fees or other fees under 37 C.F.R. § 1.16 or any required extension of time fees or other fees under 37 C.F.R. § 1.17, to Deposit Account No. 06-1050, on which the undersigned is authorized to sign, and to treat such authorization to charge Deposit Account No. 06-1050 as a constructive petition for an extension of time in this or any concurrent or future reply requiring a petition for an extension of time under 37 C.F.R. § 1.136(a) for its timely submission. The Commissioner is further hereby authorized to credit any overpayment to Deposit Account No. 06-1050.

Please direct all correspondence in this application to **PTO CUSTOMER NO: 26201**.

Respectfully submitted,

Date: June 25, 2009

  
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